

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAMES SHIVE
P.O. Box 44065
Rio Rancho, NM 87174

Plaintiff,

v.

Civil Case No.: 1:15-cv-406

AMAZON.COM, INC.
410 Terry Avenue North
Seattle, WA 98109-5210

Serve: The Prentiss Hall Corporation System, Inc.
123 East Marcy Street, Suite 101
Santa Fe, New Mexico 87501

and

eBAY, INC.,
2065 Hamilton Ave.
San Jose, California 95125

Serve: CT Corporation System, Inc.
123 East Marcy Street
Santa Fe, New Mexico 87501

and

JOHN LAVECCHIA
d/b/a EastWest Graphics
20 Wedgewood Drive
Carteret, New Jersey 07008

Serve: John LaVecchia

and

J&C BASEBALL CLUBHOUSE, INC.
990 Cedarbridge Avenue
Brick Town, New Jersey 08723

Serve: Christopher Rotundo

and

SEARS HOLDING CORPORATION
3333 Beverly Road
Hoffman Estates, Illinois 60179

Serve: The Corporation Company
123 E. Marcy Street
Santa Fe, New Mexico 87501

and

UNBEATABLE SALE.COM, INC.
195 Lehigh Avenue
Lakewood, New Jersey 08701

Serve: Corporation Service Company
830 Bear Tavern Road
West Trenton, New Jersey 08628

and

WAL-MART STORES, INC.
702 S.W. 8th Street
Bentonville, AK 72716-8611

Serve: The Corporation Company
123 E. Marcy Street
Santa Fe, New Mexico 87501

Defendants.

VERIFIED COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff James Shive, by his undersigned counsel, brings his Verified Complaint for Copyright Infringement against Defendants Amazon.com, Inc.; eBay, Inc.; EastWest Graphics, J&C Baseball Clubhouse, Inc.; Sears Holding Corporation; Unbeatable Sale.com, Inc.; and Wal-Mart Stores, Inc., by which Plaintiff seeks damages and other relief for Defendants' infringement of his copyrighted photograph of Clarence Clemons (the "Clemons Photograph"). The image is of Clemons dressed in white, playing his saxophone, with the pale, partially hidden image of

Bruce Springsteen behind him. Mr. Shive's photograph has been copied and sold or offered for sale by Defendants without his permission. The Clemons Photograph was first published in the August 4, 2011 issue number 1136 of Rolling Stone magazine, the copyright of which was registered with the U. S. Copyright Office as Copyright Registration No. TX 7,494,880 issued to Rolling Stone, LLC on February 16, 2012. A copy of that Certificate of Registration, with a copy of the cover of that issue of Rolling Stone and of the photograph as it appeared on page 7, is attached hereto as Exhibit 1. Plaintiff has also applied for and obtained a separate registration of his copyright in that photograph in his own name, as evidenced by Copyright Registration No. VA 1-952-611, issued to Plaintiff with the effective date January 20, 2015. A copy of that Certificate of Registration, with a copy of the subject photograph submitted with Plaintiff's application, is attached hereto as Exhibit 2. In support of his Complaint, Plaintiff alleges as follows:

I. JURISDICTION AND VENUE

1. Plaintiff James Shive brings this action for copyright infringement pursuant to the United States Copyright Act of 1976, 17 U.S.C. § 101, et seq. This Court has original and exclusive jurisdiction over Plaintiff's Complaint pursuant to the provisions of 28 U.S.C. §§ 1331 and 1338.

2. Defendants conduct business, either through retail stores located in the Albuquerque, New Mexico metropolitan area, or by offering goods on-line via the internet for on-line purchase by residents of New Mexico, and their actions complained of arise from their unauthorized reproduction and offering of Plaintiff's copyrighted photographs for sale to residents of New Mexico. Accordingly, this Court has personal jurisdiction over Defendants.

3. One or more of the Defendants named herein are found in this judicial district, and all are subject to this Court's jurisdiction. Accordingly, venue is proper in this judicial

district with respect to Plaintiff's Complaint under the provisions of 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400.

II. PARTIES

4. Plaintiff James Shive ("Mr. Shive") is an individual who resides in Rio Rancho, New Mexico, having a mailing address as set forth in the caption of this Complaint. Mr. Shive is a professional photographer, who is well-known for having produced a highly-regarded body of photographic images featuring leading popular musical artists during the 1970's and 1980's, prominent among those musical artists being Bruce Springsteen and members of the E Street Band. As is discussed more fully below, Mr. Shive took the photograph of Clarence Clemons, the well-known saxophonist in the E Street Band, that is the subject of his claim for infringement. That photograph is covered by Copyright Registration No. TX 7,494,880 issued by the Register of Copyrights for the August 4, 2011 issue of Rolling Stone magazine, in which Plaintiff's photograph of Clarence Clemons was first published with Plaintiff there identified on the photograph; and is also the subject of Copyright Registration No. VA 1-952-611 issued to Mr. Shive. Mr. Shive has not given permission to any of Defendants to copy, sell or otherwise use his photograph in connection with their business, or otherwise.

5. Defendant Amazon.com, Inc. is, on information and belief, a corporation organized under the laws of Delaware, having its headquarters offices at the address set forth in the caption of this Complaint.

6. Defendant eBay, Inc. is, on information and belief, a corporation organized under the laws of Delaware, having its headquarters offices at the address set forth in the caption of this Complaint.

7. Defendant John LaVecchia (“Mr. LaVecchia”) is, on information and belief, an individual citizen of New Jersey who conducts business under the name EastWest Graphics at the address set forth in the caption of this Complaint.

8. Defendant J&C Baseball Clubhouse, Inc. is, on information and belief, a corporation organized under the laws of New Jersey having its headquarters offices at the address set forth in the caption of this Complaint.

9. Defendant Sears Holding Corporation is, on information and belief, a corporation organized under the laws of Delaware, having its headquarters offices at the address set forth in the caption of this Complaint.

10. Defendant Unbeatable Sale.com, Inc. is, on information and belief, a corporation organized under the laws of New Jersey having its headquarters offices at the address set forth in the caption of this Complaint.

11. Defendant Wal-Mart Stores Inc. is, on information and belief, a corporation organized under the laws of Delaware, having its headquarters offices at the address set forth in the caption of this Complaint.

III. FACTS

12. For over a decade beginning in the early 1970’s Mr. Shive chronicled the popular music scene in the United States by photographing many if not most of the leading popular rock and roll performers of the era in their live performances, primarily in venues located in the eastern cities of the country. He is perhaps best known for his photographs of Bruce Springsteen and the E Street Band, from the time they began performing in local clubs in New Jersey, through and after their rise to international stardom. Mr. Shive has donated hundreds of his photographs from that period to the Rock and Roll Hall of Fame Museum, where they constitute an important archival source of the history of the popular music of the time.

13. On May 27, 1978 Springsteen and the E Street Band performed in concert at the Spectrum, the principal popular music concert venue in Philadelphia, Pennsylvania. Mr. Shive attended and photographed that concert. Among the photographs he took on that occasion is the Clemons Photograph. Clarence Clemons was for nearly 40 years, until his death in 2011, the great tenor saxophone player in the E Street Band.

14. Clarence Clemons died on June 18, 2011. Soon after his death Rolling Stone magazine prepared to publish an article in his memory, and sought to obtain a photograph of Clemons to be featured in the issue in which the article was to appear. Rolling Stone sought and obtained a license to use the Clemons Photograph from a photo agency authorized to license use of Mr. Shive's photographs, and the Clemons Photograph was published in the August 4, 2011 issue number 1136 of Rolling Stone, as part of a Tribute in his memory that was prominently announced in a banner appearing on the cover of that issue of the Rolling Stone.

15. Rolling Stone LLC registered its copyright in the August 4, 2011 issue of Rolling Stone magazine with the U.S. Copyright Office, which issued it Certificate of Registration No. TX 7,494,880, a copy of which is attached hereto as Exhibit 1.

16. During the winter of 2014-15 Mr. Shive became aware that each of the defendants was reproducing, and offering for sale over the internet, copies of the Clemons Photograph, advertising these images as valuable memorabilia. The reproduction and offer to sell copies of the Clemons Photograph were done without the knowledge or permission of Mr. Shive.

17. Mr. Shive engaged counsel who, beginning in January 2015, contacted each of the defendants named herein, demanding that they cease reproducing or offering for sale copies of the Clemons Photograph and report to Mr. Shive, inter alia, all sales they had made and all revenue earned from their sale of the Clemons Photograph. Of the named defendants, Wal-Mart Stores, Inc. and J&C Baseball Clubhouse, Inc. had representatives respond to Mr. Shive's

demands, and they refused to acknowledge responsibility for violating Mr. Shive's copyright or to provide information sought by Mr. Shive's counsel. The remaining five defendants did not respond at all to the communication from Mr. Shive's counsel. Mr. Shive has no way of knowing for how long any of these named defendants have been reproducing or selling images of the Clemons Photographs; how many copies have been made, used, sold or displayed, or how much revenue the defendants or their affiliates have received from these unauthorized activities.

18. In their reproduction, sale, display or otherwise unauthorized uses of the Clemons Photograph, all defendants acted willfully or with reckless disregard for Mr. Shive's rights as the owner of copyright in that photograph.

COUNT I

Copyright Infringement

19. Plaintiff realleges, and incorporates herein by reference, the allegations contained in paragraphs 1 through 18 above of his Complaint.

20. By their actions described above, Defendants knowingly and willfully infringed Plaintiff's copyright in the Clemons Photograph.

WHEREFORE, Plaintiff James Shive demands as follows:

1. That all Defendants be preliminarily and permanently enjoined from reproducing, selling or using Plaintiff's Clemons Photograph.

2. That Defendants each be required to pay Plaintiff all his damages and lost profits caused by Defendants' infringing actions, in an amount believed to be in excess of \$50,000.00; and

3. That Defendants each be ordered to surrender all copies of the subject photograph in their possession or under their control for destruction.

4. That Defendants each be required to pay Plaintiff his costs and attorney's fees incurred in bringing and prosecuting this lawsuit for copyright infringement, as provided in 17 U.S.C. § 505; and

5. That this Court order whatever further relief against Defendants this Court deems just and proper.

JURY DEMAND

Mr. Shive demands trial by jury on his Complaint herein.

Respectfully submitted,

PEACOCK MYERS, P.C.

By /s/ Jeffrey L. Squires

Jeffrey L. Squires

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Attorneys For Plaintiff

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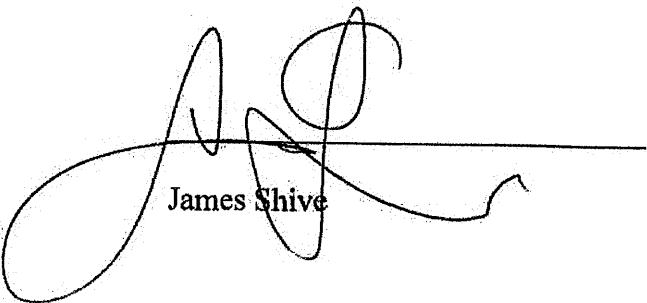
Defendants.

VERIFICATION

James Shive, here states as follows:

I have read the Complaint herein to which my verification is appended and made part.
The facts stated therein are, to the best of my knowledge, true and correct, excepting only for any statements made on information and belief, which statements I believe to be true and correct.

I declare, this 12 day of May, 2015, under penalty of perjury, that the foregoing is to the best of my knowledge true and correct.



James Shive